IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 647 of 2007()

CC.818/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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PETITIONER: ACCUSED

P.M.IBRAHIMKUTTY, INDIYAS ICE,
EBRAHIM MANZIL, CHANDIROOR, ALAPPUZHA-688547.

BY ADV. SRI.C.HARIKUMAR
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 647 of 2007

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Dated this the 12th day of March, 2007

O R D E R

The petitioner is the accused in a prosecution initiated against him under Sections 135 and 138 of the Indian Electricity Act.

2. The crux of the allegations against him is that he had tampered with the meter to facilitate illegal extraction of electrical energy from the connection installed in his premises. An F.I.R. was registered by the S.I. of Police, on the complaint allegedly received from the Asst. Engineer of the K.S.E.B. Investigation was conducted and final report was filed by the Investigating police official. Cognizance was taken on such final report and the case against the petitioner has been registered. The petitioner has not appeared before the learned Magistrate personally. He has appeared through counsel and had filed application to excuse his absence.

3. The short contention raised by the learned counsel for the petitioner is that the cognizance of the offences taken against the petitioner is clearly barred in view of the provisions of Section 151 of the Indian Electricity Act. The said section reads as follows:

> **S.151. Cognizance of offences.** - No Court shall take cognizance of an offence punishable under this act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose."

No court is entitled to take cognizance of any offence punishable under the Indian Electricity Act except upon a complaint in writing by appropriate Government or appropriate commission or any other officer authorised by them or a Chief Electrical Inspector or Electrical Inspector or licensee or the generating company as the case may be. In this case, admittedly, cognizance was taken only on the basis of the final report submitted by the Investigating police official. No complaint has been made by any one of the persons in the enumerated category under Section 151 of the Act. Therefore, cognizance taken is liable to be set aside, submits the learned counsel for the petitioner.

4. The very same question came up for consideration before another learned Judge of this Court in **Paramasivam** v. **Union of India & ors.** (2006 (4) I.L.R. Kerala 874). I may advantageously extract paragraph 19 of the said judgment below:

> 19. The third point to be decided is whether on the facts of the present case, the Magistrate can proceed with the trial of

> the case. In view of the legal principles, which have been considered while considering the validity of Rule 12, the answer can only be an emphatic "No". In this case, as the licensee has not filed any complaint in writing before the court, the court below shall stop the trial of the case, in view of the embargo under section 151. The K.S.E.B. can file a complaint before the court below, based on the facts and the materials disclosed by the police report and make a prayer to the learned Magistrate to take cognizance of the offence alleged against the petitioner. It will be permissible for any officer of the K.S.E.B., who is authorised by it under Rule 12(4) of the Electricity Rules , 2005 (Ext.P2), to file the complaint. The K.S.E.B. being a legal person, even in the absence of Rule 12 (4), it may be permissible for it to file a complaint through its authorised officers. This view has been taken by the Apex Court in State of **State of Karnataka** v. **Adimurthy**, while interpreting Section 50 of the Indian Electricity Act, 1910, which is, to certain extent, similar to Section 151 of the Electricity Act, 2003. It was held that an authorised officer of the Electricity Board can move the police on behalf of the Board. Upon receipt of such a complaint, the trial court shall proceed with the case in accordance with law."

The learned Judge has stated that the answer to the question as to whether proceedings can continue when cognizance is so taken is an emphatic no. I totally concur with the decision taken by the learned Judge. Cognizance taken cannot, in these circumstances, be held to be legal or valid.

5. After discussions at the Bar, in the light of the specific observations in paragraph 19 referred above, the learned Prosecutor also concedes that the cognizance taken is not valid and legal.

6. This Crl.M.C. is accordingly allowed. Cognizance taken against the petitioner in C.C.No.818 of 2006 is hereby quashed as such cognizance has been taken in violation of the clear mandate of Section 151 of the Act. The alternate courses available have been mentioned in the said paragraph 19 extracted above. If appropriate complaint is filed, needless to say, the learned Magistrate shall consider the matter afresh and the setting aside of the cognizance taken as per this order will not in any way stand against such course available in law to the K.S.E.B. or its officials and the learned Magistrate. It is submitted that a warrant of arrest has been issued by the learned Magistrate. Needless to say, such warrant shall not be executed now and immediate steps shall be taken by the learned Magistrate to recall the same.

(R. BASANT)
Judge

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